

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|----------------------------------|---|------------------|
| MAGNABLEND, INC., |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION NO. |
| VS. |) | 3:12-CV-1841-G |
| HARTFORD FIRE INSURANCE |) | |
| COMPANY, |) | |
| |) | |
| Defendant/Third Party Plaintiff, |) | |
| |) | |
| VS, |) | |
| |) | |
| AMERICAN GUARANTEE AND |) | |
| LIABILITY INSURANCE COMPANY, |) | |
| |) | |
| Third Party Defendant. |) | |

ORDER

Before the court is the motion of the third-party defendant American
Guarantee and Liability Insurance Company (“American Guarantee”) to dismiss the
defendant Hartford Fire Insurance Company’s (“Hartford”) amended third-party
complaint against it (docket entry 42). FED. R. CIV. P. 12(b)(6) authorizes dismissal
of a complaint “for failure to state a claim upon which relief can be granted.” A
motion under Rule 12(b)(6) should be granted only if it appears beyond doubt that

the plaintiff could prove no set of facts in support of its claim that would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Leffall v. Dallas Independent School District*, 28 F.3d 521, 524 (5th Cir. 1994) (citations omitted). Before dismissal is granted, the court must accept all well-pleaded facts as true and view them in the light most favorable to the non-movant. *Capital Parks, Inc. v. Southeastern Advertising and Sales System, Inc.*, 30 F.3d 627, 629 (5th Cir. 1994) (citation omitted); *Norman v. Apache Corporation*, 19 F.3d 1017, 1021 (5th Cir. 1994) (citations omitted); *Chrissy F. by Medley v. Mississippi Department of Public Welfare*, 925 F.2d 844, 846 (5th Cir. 1991). The thrust of the motion is that Hartford, the third-party plaintiff, has failed to state claims upon which this court could grant it relief. The court concludes, however, that American Guarantee has failed to show that the third-party plaintiff could prove no set of facts in support of its claims that would entitle it to relief.

American Guarantee's motion to dismiss is therefore **DENIED**.*

SO ORDERED.

March 11, 2014.


A. JOE FISH
Senior United States District Judge

* American Guarantee filed a similar motion on April 22, 2013 (docket entry 27). That motion is **DENIED** as moot.